

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ROBERT D. HAZEN  
and Net Profit Tax Center Attn: Robert D. Hazen  
170 Westwich  
Danville, CA 94506

Certified Public Accountant Certificate No.  
16767  
Fictitious Name Permit No. 1074

Respondent.

Case No. AC-2002-11

OAH No. N-2002100245

**DECISION AND ORDER**

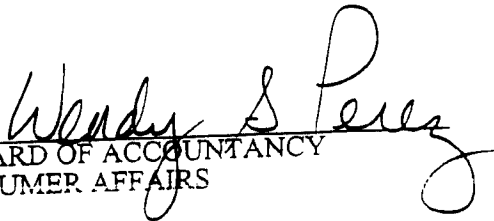
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective immediately upon adoption. It is so

ORDERED December 31, 2002.

WENDY S. PEREZ, CPA  
PRESIDENT

For the CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS



BILL LOCKYER, Attorney General  
of the State of California  
JEANNE C. WERNER, State Bar No. 93170  
Deputy Attorney General  
California Department of Justice  
1515 Clay Street, 20<sup>th</sup> Floor  
P.O. Box 70550  
Oakland, CA 94612-0550  
Telephone: (510) 622-2226  
Facsimile: (510) 622-2121

Attorneys for Complainant

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ROBERT DOUGLAS HAZEN  
aka Bob Hazen  
170 Westwich  
Danville, CA 94506

Certified Public Accountant  
Certificate No. 16767 and

Fictitious Name Permit No. 1074  
Robert Hazen, CPA, dba Net Profit Tax  
Center,

Respondent.

Case No. AC-2002-11

OAH No. N-2002100245

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the  
parties to the above-entitled proceedings that the following matters are true:

**PARTIES**

1. Complainant Carol Sigmann is the Executive Officer of the California Board of Accountancy. She brought this action solely in her official capacity and is

represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jeanne C. Werner, Deputy Attorney General.

2. Respondent Robert D. Hazen is represented in this proceeding by attorney Robert F. Hahn, whose address is 5801 Christie Avenue, Suite 385, Emeryville, CA 94608.

3. On or about October 1, 1971, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. 16767 to Respondent Robert D. Hazen. The Certified Public Accountant Certificate was not valid during the following periods: January 1, 1990 through April 26, 1990; January 1, 1992 through March 23, 1992; January 1, 1994 through January 28, 1994; and January 1, 1996 through January 26, 1996<sup>1</sup>. The license was otherwise in effect during the time period relevant to this accusation and is currently renewed in an active status through December 31, 2003.

4. Respondent holds a Fictitious Name Permit No. 1074, issued by the Board on November 2, 2000, permitting him, as a sole proprietor, to practice under the name Net Profit Tax Center, a name other than that set forth on his CPA Certificate, at the above-captioned address.

#### JURISDICTION

5. Accusation No. AC-2002-11 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 25, 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2002-11 is attached as exhibit B and incorporated herein by reference.

---

<sup>1</sup> Underlying documentation related to license history from the date of issuance through March 1989 is unavailable.

### ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2002-11. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

### CULPABILITY

9. Respondent's specific admissions, as well as his statements offered in mitigation, are contained in Exhibit A, Stipulated Admissions and Statements Offered in Mitigation, which is attached hereto and incorporated herein as though fully set forth. As stated therein, Respondent specifically admits the matters alleged in paragraphs 14 E, 15, 17D, 17E, 17.I., 17 J., 21, 22B, 23D., 23E., 23H., and 23. I. in the Third Amended Accusation , and further admits that, as to those paragraphs which are not specifically addressed in Exhibit A, the facts pled in the Third Amended Accusation form a sufficient basis for the imposition of discipline, as stipulated herein, upon Respondent's CPA License and Fictitious Business Permit. However, the admissions made by Respondent herein are expressly limited and are made only for the purposes of this proceeding, or any other proceedings in which the California Board of Accountancy or other professional or

occupational licensing agency is involved. The admissions shall be of no force and effect, nor shall they be admissible, in any other criminal or civil proceeding. Further, the Board does not accept as true the statements offered in mitigation or denial, but finds that the admissions made form a sufficient basis for the imposition of its order.

10. Respondent agrees that his Certified Public Accountant Certificate and Fictitious Name Permit are subject to discipline and he agrees to be bound by the Board's immediate order of revocation as set forth in the Disciplinary Order below.

#### CONTINGENCY

11. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of Respondent's stipulation to license revocation, the Board will not seek reimbursement of related and accrued investigation and prosecution costs in this matter at this time. However, should respondent seek reinstatement of his certificate in the future, he agrees that, prior the Board's consideration of his petition for reinstatement, he will reimburse the Board \$63,570.92 for costs incurred in the

investigation and prosecution of this action and stipulates that such costs are reasonable and properly imposed under Code Section 5107 and the holding in *Zuckerman*.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:


**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 16767, and Fictitious Name Permit No. 1074, both issued to Respondent Robert D. Hazen, are revoked.

**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate, and Fictitious Name Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: December 13, 2002.

  
ROBERT D. HAZEN  
Respondent

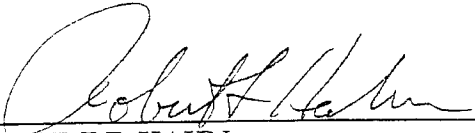
//

//

//

I have read and fully discussed with Respondent Robert D. Hazen the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: December 13, 2002.

  
\_\_\_\_\_  
ROBERT F. HAHN

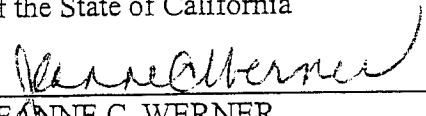
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: December 13, 2002.

BILL LOCKYER, Attorney General  
of the State of California

  
\_\_\_\_\_  
JEANNE C. WERNER  
Deputy Attorney General

Attorneys for Complainant

[end of document]

DOJ Docket Number: 03541110-SF2002AD0111

Robert F. Hahn SB# 189901  
Law Offices of Gould & Hahn  
5801 Christie Avenue, Suite 385  
Emeryville, CA 94608  
Telephone: (510) 428-2229  
Facsimile: (510) 428-2232

Attorney for Respondent

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ROBERT DOUGLAS HAZEN  
aka Bob Hazen  
170 Westwich  
Danville, CA 94506

Certified Public Accountant  
Certificate No. 16767 and

Fictitious Name Permit No. 1074  
Robert Hazen, CPA, dba Net Profit Tax  
Center,

Respondent.

Case No. AC-2002-11

OAH No. N-2002100245

**STIPULATED ADMISSIONS AND  
STATEMENTS OFFERED IN  
MITIGATION**

[Exhibit A to Stipulated Settlement and  
Disciplinary Order]

**STIPULATED ADMISSIONS AND STATEMENTS OFFERED IN MITIGATION**

Respondent admits that he committed gross negligence and breach of fiduciary responsibility in the administration of the Smith and Harris trusts. Respondent specifically admits to allegations 14 E, 15, 17D, 17E, 17.I., 17 J., 21, 22B, 23D., 23E., 23H., and 23. I. as set forth in the Third Amended Accusation. Respondent expressly denies all allegations alleging fiscal dishonesty, misrepresentation, and/or fraud.



Paragraph Numbers (Third Amended Accusation):

## **HARRIS TRUST**

(14D)

Respondent did not intentionally delay delivery of the documents or assets. In January 2001, Respondent was asked to deliver the documents and assets. January through April is the height of the tax preparation season, and Respondent responded that he would forward the documents and assets after the tax season. In April 2001, Respondent diligently searched for the Harris Trust documents. Prior to the request for the documents and assets, Respondent moved his office on two occasions, on March 8, 1999 and December 31, 2000. During that time, all of his records were stored in boxes. Respondent searched through fifteen boxes, and found four boxes of documents that he believed contained all of the documents he had retained that pertained to the Harris Trust. These boxes were then turned over to Mr. Kouba. During the moves the bank statements were lost.

Respondent filed an accounting with the court on or before July 31, 2001, actually endorsed filed on August 7, 2001, although the latter determined the format did not meet the Probate statutes. The substance of the accounting has never been questioned. Jon Kouba, counsel for co-trustee John Howell accepted the assets reflected in the accounting as correct, and the Court issued the Stipulation and Judgment mentioned in paragraph 14 (E) of the First Amended Complaint, based on that accounting.

(14 E)

Respondent admits this allegation. In mitigation, Respondent is in compliance with the terms of the Stipulation.

(15)

Respondent admits that the disbursements described in fact occurred.

Regarding the allegations that the comparison of the records to the trust tax returns for the years 1999 and 2000 reveals that the tax returns did not reflect these disbursements (that is the returns do not contain any deduction expense amounts for trustee fees, tax returns, accounting or other professional services, despite numerous checks written to Hazen), Respondent denies that the tax returns do not reveal the disbursements.

The "disbursements" the Complainant refers to were not deductible disbursements; they were not payments to beneficiaries nor were they payments for any services rendered by Respondent in his capacity as trustee or an accountant or services rendered by any other party. Rather, the funds were loans withdrawn from the trust to invest in Respondent's personal business ventures. Respondent was not required to report these loans in the 1999 or 2000 tax returns.

Regarding the allegations that the disbursements are not reported in the trust's financial statements and that the disbursements do not appear in the trust accounting, Respondent admits that because he borrowed from the trust account to invest in personal business ventures, these withdrawals should have been reported in the trust's financial statements as loans and that they were not. However, Respondent prepared a cash analysis that illustrated the cash going in and going out of the trust bank account, and he used this document to calculate the interest owed on each loan repayment he was to pay back. Respondent kept a ledger to report and figure out the taxes due and interest to pay back, and he paid interest on the loan payments to the trust in the amount between 8 and 9 percent.

Respondent admits that the difference between the financial statements prepared and issued by Hazen as of 12/31/99 and the trust's bank balance as of 12/31/99 is \$176,548.49. Respondent admits that the difference between the financial statements prepared and issued by Hazen as of 12/31/00, and the trust's bank balance as of that date is \$198,258.11.

(16)

Respondent denies these allegations. Respondent reported both the interest accrued on the assets in the trust accounts and the interest he paid to the trusts in his loan repayments. The interest income reported on the 1999 tax return included \$591.48 from the Harris Trust bank account and \$549.52 interest income paid by Respondent for the loan repayments. The interest income reported on the 2000 tax return included \$26.17 from the Harris Trust bank account and \$8,463.83 interest income paid by Respondent on the loan repayments. The amount of interest on both ventures was correct and the trust did not overpay \$65 in 1999 and \$1,230 in 2000.

## **SMITH TRUST**

(19 D (1)) Failure to timely provide a 1999 K-1 relating to trust proceeds for Unitrust #2 (to Wooten)

Respondent denies this allegation. Respondent filed an Application for an Extension of Time to file the taxes for calendar year 1999 until October 15, 2000 for the Unitrusts. On April 27, 2000, Respondent was removed as trustee leaving the Deseret Trust Company as successor trustee. Deseret Trust Company, therefore, had the duty to prepare and file the tax forms.

(19 D (2))

Respondent denies this allegation. Several assets of the Unitrusts were sold after Mr. Smith's death. The assets consisted primarily of rental properties in areas of Oakland, Hayward, and Ben Lomond, California. The properties

were "difficult" areas and were in various states of disrepair. The properties were sold on the open market and/or to tenants after the receipt of one or more appraisals. The actual fair market value, as determined by the selling price, was less than the value Mr. Smith had estimated in 1993. Accordingly, the assets in the trust declined and could not meet the original estimated amounts of disbursement.

Although the Trust called for distribution checks at least quarterly, Mrs. Wooten insisted on being paid monthly at the original rate of \$2,900. When advised that the trust did not have assets to support that amount, Wooten retained legal counsel to keep the monthly payments at their original level. An agreement was struck wherein, the distribution would be reduced to \$2,500 per month, when in reality, the trust assets could only support \$2,100 per month. It was further agreed that Ms. Wooten's distribution would be reduced further when the payments on her Cadillac were completed in the end of 1999. In order to avoid controversy with Ms. Wooten, Respondent attempted to pay her each month, although, as trustee, he was not required to do so.

The check dishonored in June 2000 was an example of one of the experiences described above. Deseret Trust had been installed as Trustee and had no assets to make her monthly distribution. Upon instructions from Conrad Bryner of Deseret Trust, Respondent issued a check to her anticipating the receipt of note payments. Mrs. Wooten cashed the check prior to receipt of the funds. Upon the dishonor and as soon as the funds were received in August of 2000, Respondent issued a cashier's check to Mrs. Wooten to replace the check in question

(19 D (3))

Respondent admits he failed to make distributions to Ms. Carruth for the fourth quarter in 1999 and the first quarter of 2000. Based upon her demands, Ms. Wooten had received distributions which totaled \$35,000 more than she should have been paid as of 1999, which depleted the assets rightly owed to Carruth in the fourth quarter of 1999 and the first quarter of 2000. The Smith trusts were the first trusts Respondent had managed. In hindsight, Respondent realizes he should have refused to make distributions to Ms. Wooten prior to them coming due. In mitigation, Respondent approached Brigham Young University about the problems with the distribution demands from Ms. Wooten and was told to do whatever it takes to "keep the family happy." Therefore, he made the distributions to Ms. Wooten as requested.

(19 D (4))

Respondent denies this allegation. No requests were made by Ms. Wooten or Ms. Carruth to provide accountings to them anytime after 1996. Respondent

provided a Revised General Ledger to October 19, 2000, Revised Balance Sheets and Income Statements as of and through October 19, 2000 to L. Conrad Bryner of Deseret Trust Company, and the Beck note on October 19, 2000. Respondent also conveyed the Samuel & Essetta Hawkins Note, the Nicholson/Cervantes Note and Richard M. & L. Jo Edwards Note.

(19 D (5))

Respondent admits this allegation. In mitigation, all the documents Respondent had in his possession as of April of 2000 were turned over. After April 2000, Respondent made every effort to locate the remainder of the documents relating to the trusts, including the outstanding notes. Respondent also turned over all the assets then existing in the trust (\$20,613.10).

(19 D (6))

Respondent denies this allegation. Although the table of contents for both Unitrusts states that there is Schedule A on page 16 of the trusts, no Schedule A was ever created for either trust. There are actually only 14 pages comprising each Unitrust. Respondent provided the beneficiaries and successor trustee with all 14 pages. Therefore, a complete copy of each Unitrust was provided to the beneficiaries and the successor trustee.

(21) Respondent admits that separate accounts were not maintained for the Smith Living Trust as distinguished from both Smith Unitrusts, thus the funds from the Living Trust were commingled with funds from both Unitrusts. The Fremont Bank account contained funds for the Smith Living Trust and both Smith Unitrusts. Because these trusts were the first trust accounts that Respondent managed, Respondent was unaware that maintaining one bank account for the three trusts was improper. In hindsight, Respondent now understands this decision was unwise.

Respondent admits that the disbursements in fact occurred. However, per the Smith Living Trust, Respondent's children were entitled to \$100,000 for payment for their education or to purchase a home. The assets in the Fremont bank account included funds from the Smith Living Trusts as well as the two Smith Unitrusts. Some of the checks that were written to Respondent's family members were payments for their education. Thus, Respondent had legal authority to issue these checks. Because these disbursements were from the Smith Living Trust, the disbursements are not required to be recorded in the Unitrusts' general ledger.

Respondent admits that he borrowed money from the trust accounts for investing in Respondent's professional business. Respondent repaid some of these loans to the Fremont bank account, along with payment of eight to nine percent interest on the funds borrowed. Respondent admits that the loan

repayments were not recorded in the general ledger. The general ledger in the Board's investigative file fails to reflect the loan payments made to the account.

( 22, 22 A.)

Respondent denies these allegations. Many checks issued by Respondent are issued through a computerized system. In some instances, if a check is issued from the same bank account, the previous memo citation written on a previous check will automatically appear on the next check. In regard to the 13 checks at issue, the memo notations were made in error. These checks, as well as the checks written to the other family members, were written for disbursements from the Living Trust and Respondent was not required to record them in the Smith Unitrusts' tax returns or the K-1s. Respondent was not required to report trustee fees in the K-1s. The K-1s need only reflect the distributions made to the beneficiaries of the Unitrusts.

(22 B)

Respondent admits that the general ledger was prepared incorrectly in that he borrowed funds from the trusts to make personal business investments. These loans, as well as the repayment and interest amounts should have been recorded in the general ledger. The tax returns however do reflect the interest paid back to the trusts by Respondent as well as the interest earned on the trusts' bank account.

(25)

Respondent denies this allegation. Ivan Smith loaned Madie Thomas \$15,000, which was secured by her home. This transaction is not included in the trust because it is not a part of the trust corpus. The loan was given to her son, who was to pay back \$200 a month. The son, or lendee, made sporadic payments on the loan. Due to the failure to make timely loan payments, Respondent could have foreclosed on the property, but instead gave the lendee more opportunities to come up to date on his payments.

Ms. Thomas' son sent a letter to Respondent, asking what the balance due on the loan was. Respondent did not respond immediately because the bank statements had been misplaced when Respondent moved his office. When Respondent found the bank statements, he calculated the amount owed, including late fees and interest at approximately 12 percent. The total due came to approximately \$21,000. While Respondent was preparing these records, the lendee contacted the Board and complained Respondent was taking too long to respond. Once the lendee received the information from Respondent stating that he owed \$21,000, the lendee again complained to the Board stating that

he had documentation that he had paid more money on the loan than Respondent stated. The lendee had copies of other checks used to make loan payments. Respondent was missing a year's worth of bank statements, which were represented by the cleared checks in the lendee's possession. Respondent made the corrections for that year, apologized to the lendee for making the mistake, and informed the lendee that he owed \$13,000

## **OTHER CAUSES FOR DISCIPLINE**

(27, 27a, and 28.b.)

Respondent admits that Net Profit Inc. was incorporated in 1993. The purpose of this corporation, as stated above is management training and marketing purposes. No tax returns or financial statements are prepared under this corporate name. This corporation name has never been used by Respondent to perform accounting work.

(29.c.)

Respondent admits that Net Profit Tax Centers, Inc. was incorporated in 2002 and that this corporation is not a licensed accountancy corporation. Respondent denies however that he ever used this corporation in connection with any accounting work as there has never been any business activity conducted under this corporate name.

(30, 31 and 32)

Respondent denies the allegations regarding his false and misleading practice as a sole practitioner. In 1971, Respondent received his Certified Public Accountancy license, which enabled him to practice accounting as a sole practitioner. Although Respondent's office had signage on the front with the name "Net Profit Tax Centers," the signage also had his name on it Robert D. Hazen, CPA. Respondent signed all the tax returns or financial statements as "Robert D. Hazen, CPA." In 2000, Respondent applied for a fictitious business name after speaking to Stephen DeRose from the Board.

Respondent denies the allegation that he failed to respond promptly, and/or completely, to written Board inquiries during the course of its investigation constitutes unprofessional conduct in violation of Board Rule 52 in conjunction with Business and Professions Code Section 5100 (f).

Respondent responded as soon as he was physically able and did not intentionally delay responding to inquiries of the Board. Respondent moved the location of his office twice, between January 1999 and December 2000, thus it was difficult to provide the Board with written inquiries promptly because the documents needed to refer to were unavailable.

(33)

Respondent denies this allegation. Respondent responded as soon as he was physically able and did not intentionally delay responding to inquiries of the Board. Respondent moved the location of his office twice, between January 1999 and December 2000, thus it was difficult to provide the Board with the documents requested.

#### **FURTHER STATEMENT IN MITIGATION**

Respondent acknowledges that he committed several lapses of judgment in his handling of the trusts involved in this matter. He has begun the restitution process and will continue to make restitution until the Trust beneficiaries have been satisfied.

[end of document]

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JEANNE C. WERNER, State Bar No. 93170  
Deputy Attorney General  
3 California Department of Justice  
1515 Clay Street, 21st Floor  
4 P.O. Box 70550  
Oakland, CA 94612-0550  
5 Telephone: (510) 622-2226  
Facsimile: (510) 622-2121

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 ROBERT DOUGLAS HAZEN  
aka Bob Hazen  
13 170 Westwich  
Danville, CA 94506

14 Certified Public Accountant  
15 Certificate No. 16767 and

16 Fictitious Name Permit No. 1074  
Robert Hazen, CPA, dba Net Profit Tax  
17 Center,

Respondent.

Case No. AC-2002-11

OAH No. N-2002100245

**Third Amended Accusation**

18  
19 Complainant Carol Sigmann files this Second Amended Accusation, replacing the  
20 Accusation filed on July 25, 2002, nunc pro tunc, and alleges, as causes for disciplinary action:

21 **PARTIES AND JURISDICTION**

22 1. Carol Sigmann ("Complainant") brings this Accusation solely in her official  
23 capacity as the Executive Officer of the California Board of Accountancy, Department of  
24 Consumer Affairs ("Board").

25 2. On or about October 1, 1971, the Board issued Certified Public Accountant  
26 Certificate Number 16767 to Robert D. Hazen ("respondent"). The Certified Public Accountant  
27 Certificate was not valid during the following periods: January 1, 1990 through April 26, 1990;  
28 January 1, 1992 through March 23, 1992; January 1, 1994 through January 28, 1994; and



1 January 1, 1996 through January 26, 1996<sup>1</sup>. The license was otherwise in effect during the time  
2 period relevant to this accusation and is currently renewed in an active status through December  
3 31, 2003.

4 3. Respondent holds a Fictitious Name Permit No. 1074, issued by the Board on  
5 November 2, 2000, permitting him, as a sole proprietor, to practice under the name Net Profit  
6 Tax Center, a name other than that set forth on his CPA Certificate, at the above-captioned  
7 address.

#### 8 JURISDICTION. STATUTES AND PROFESSIONAL STANDARDS

9 4. This Accusation is brought before the Board under Section 5100 of the Business  
10 and Professions Code ("Code"), which, at all times material herein, has provided that the Board  
11 may revoke, suspend or refuse to renew any permit or certificate issued by the Board (including  
12 individual and corporate licenses) for unprofessional conduct which includes, but is not limited  
13 to, the provisions set forth therein.

14 5. At all times material herein, section 5100 of the California Business and  
15 Professions Code (hereinafter "code") has provided in pertinent part<sup>2</sup> that "(a)fter notice and  
16 hearing, the Board may revoke, suspend or refuse to renew any permit or certificate" issued by  
17 the Board for unprofessional conduct, including but not limited to:

18 5100 (c) Dishonesty, fraud, or gross negligence in the practice of public  
19 accountancy. (Code section 5051 defines the practice of public  
20 accountancy.)

21 5100 (f) Willful violation of the Accountancy Act or any rule or regulation  
22 promulgated by the board.

23 5100 (h) Fiscal dishonesty or breach of fiduciary responsibility of any kind;

24 5100 (i) Knowing preparation, publication or dissemination of false, fraudulent, or

---

25  
26 1. Underlying documentation related to license history from the date of issuance through  
27 March 1989 is unavailable.

28 2. Note that Section 5100 has been amended, resulting in certain of these subparagraphs  
being renumbered (but not otherwise changed) effective January 1, 2003.

1 materially misleading financial statements, reports, or information.

2 5100(j) Embezzlement, theft, misappropriation of funds or property, or obtaining  
3 money by fraudulent means or false pretenses.

4 6. The California Probate Code (e.g., Probate Code Section 16000 et seq.) provides  
5 certain requirements for one performing as a trustee in the state of California.

6 California Probate Code<sup>3</sup> Section 16000 et seq. provides as follows:

- 7 A. A trustee has the duty to administer a trust according to the trust instrument and,  
8 except to the extent the trust instrument provides otherwise, according to  
9 California trust law, and solely in the interest of the beneficiaries. [Cal. Probate  
10 Code, Part 4 Trust Administration, §§16000; 16002].
- 11 B. The trustee has a duty not to use or deal with trust property for the trustee's own  
12 profit or for any other purpose unconnected with the trust [Cal. Probate Code  
13 §16004(a)].
- 14 C. The trustee's standard of care is defined in Section 16040 of the California  
15 Probate Code as requiring reasonable care, skill, and caution under the  
16 circumstances then prevailing that a prudent person acting in a like capacity  
17 would use. [Cal. Probate Code §16040].
- 18 D. The trustee has a duty to keep the beneficiaries of the trust reasonably informed of  
19 the trust and its administration [Cal. Probate Code §16060].
- 20 E. The trustee shall, upon reasonable request by a beneficiary, provide the  
21 beneficiary with a report of information about the assets, liabilities, receipts, and  
22 disbursements of the trust, the acts of the trustee, and the particulars relating to the  
23 administration of the trust relevant to the beneficiary's interest, including the  
24 terms of the trust that describe or affect the beneficiary's interest [Cal. Probate  
25 Code §16061; 16060.5].
- 26 F. The trustee shall account at least annually, at the termination of the trust, and

27  
28 3. Portions of the California Probate Code are attached hereto as Exhibit A.

- 1 upon a change of trustees, to each beneficiary [Cal. Probate Code §16062].
- 2 G. The account furnished pursuant to Section 16062 is required to contain specific
- 3 information, including a statement of receipts and disbursements of principal and
- 4 income that have occurred during the last complete fiscal year/reporting period; a
- 5 statement of the assets and liabilities for the same period; the trustee's
- 6 compensation for the reporting period; and a statement that the recipient of the
- 7 account may petition the court pursuant to Section 17200 to obtain a court review
- 8 of the account and of the acts of the trustee .
- 9 H. The trustee has a duty to take reasonable steps to enforce claims that are part of
- 10 the trust property [Cal. Probate Code §16010].
- 11 I. The trustee has a duty to...keep the trust property separate from other property not
- 12 subject to the trust...(and) to see that the trust property is designated as property of
- 13 the trust [Cal. Probate Code §16009].
- 14 J. Except as provided in Section 21351(review by independent attorney and court
- 15 approval), no provision of any instrument shall be valid to make any donative
- 16 transfer to any of the following:
- 17 (1) The person who drafted the instrument, or a person who has a fiduciary
- 18 relationship with the transferor.
- 19 (2) A person who is related by blood or marriage to...the person who drafted the
- 20 instrument or to a person who has a fiduciary relationship with the transferor.[Cal.
- 21 Probate Code §21350 Prohibited Transferees]
- 22 K. A violation by the trustee of any duty that the trustee owes the beneficiary is a
- 23 breach of trust [Cal. Probate Code §16400].
- 24 L. The California Penal Code, Section 506, further provides that any trustee who
- 25 fraudulently appropriates trust property to any use or purpose not in the due and
- 26 lawful execution of said trust is guilty of embezzlement.
- 27 7. Board Rule 58 (Cal. Code Regs., tit.16, § 58) requires that a licensee comply with
- 28 all applicable professional standards. The AICPA *Code of Professional Conduct* includes

1 Section I-Principles and Section II-Rules. Both the Principles (Articles III and VI) and the  
2 Rules (Rule 102, rule 501) are relevant to the allegations herein. For example, Rule 102  
3 (Integrity and Objectivity), provides that:

4 "In the performance of any professional service, a member shall maintain objectivity and  
5 integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts  
6 or subordinate his or her judgment to others."

7 8. U.S. Department of the Treasury, Internal Revenue Service, regulations regarding  
8 diligence as to accuracy, found at Circular 230, Section 10.22, and diligence as to promptness,  
9 found at Circular 230, Section 10.23, are relevant to this Accusation, as are the 1998 IRS Form  
10 1041 Instructions (U.S. Income Tax Return for Estates and Trusts).

11 9. Code section 5037(b)(2) provides that a licensee shall furnish to his or her client  
12 or former client, upon request and reasonable notice, any accounting or other records belonging  
13 to, or obtained from or on behalf of the client, which the licensee removed from the client's  
14 premises or received for the client's account. Board Rule 68 (Cal. Code Regs., tit.16, §68)  
15 provides that a client shall not retain a client's records after demand by or on behalf of a client.

16 10. Board Rule 52 (Cal. Code Regs., tit.16, § 52) requires that a licensee:

17 "...respond to any inquiry by the board or its appointed  
18 representatives. The response shall include making available all  
19 files, working papers and other documents requested. Failure to  
20 respond to the inquiry within 30 days constitutes a violation of  
21 Section 5100(f) of the Accountancy Act. Any inquiry by the board  
22 requiring a response pursuant to this section shall be in writing.  
23 The 30-day response period begins when the inquiry is mailed to  
24 the licensee, or if not mailed, when personally delivered."

25 11. Code Section 5061 defines the practice of public accountancy. Code section 5060  
26 prohibits a person, including a corporation, from practicing public accountancy without a valid  
27 permit to practice issued by the Board.

28 12. Code section 5107 provides for recovery by the Board of all reasonable costs of  
investigation and prosecution in specified disciplinary actions, including alleged violations of  
Code sections 5100(c), 5100(i), 5100 (j), or fiscal dishonesty in violation of (h), which costs  
include, but are not limited to, attorneys' fees. A certified copy of the actual costs, or a good  
faith estimate of costs signed by the Executive Officer, constitute prima facie evidence of

1 reasonable costs of investigation and prosecution of the case.

## 2 FIRST CAUSES FOR DISCIPLINE

### 3 Dale C. Harris and Enid H. Harris Family Trust

4 13. The CPA certificate of Respondent Robert Hazen is subject to discipline for  
5 multiple violations of the Business and Professions Code and other laws, arising out of or related  
6 to his position as co-trustee for the Dale C. Harris and Enid H. Harris Family Trust (hereinafter  
7 "Harris Trust").

8 14. The circumstances regarding the Harris Trust and Respondent Robert Hazen's  
9 involvement with it are as follows:

10 A. The Harris Trust was created on September 11, 1992 by Dale C. and Enid H.  
11 Harris, husband and wife. It was amended on July 12, 1994. The trust became irrevocable upon  
12 the death of the last surviving spouse, Enid H. Harris, on February 26, 1999. The principal trust  
13 assets at the time of her death were to be distributed by bequest to named beneficiaries in the  
14 amounts specified in the trust agreement and amendment. The remainder of the trust was to be  
15 distributed to the heirs stated in the trust agreement, in the percentages specified.

16 B. Respondent Robert D. Hazen, CPA, a co-trustee of the trust from its inception,  
17 took the principal role in administering the trust and, upon the death of Mrs. Harris, was  
18 responsible for marshaling the assets of said trust and distributing the principal and any accrued  
19 or undistributed income thereon to the persons set forth in the Trust Agreement and the First  
20 Amendment to the Trust Agreement. The First Amendment to the Trust Agreement provided  
21 for a specific bequest to Respondent. A Balance Sheet for the trust as of December 10, 1999,  
22 showed trust assets in excess of \$300,000.00. The Balance Sheet was created by Respondent.

23 C. In response to repeated inquiries from Co-trustee Howell and Beneficiary  
24 McCloskey (both residing out-of-state), Respondent Hazen represented, in a letter dated October  
25 30, 2000, that he had made all of the specific bequests provided for in the trust agreement (thus  
26 making possible the distribution of the "remainder" in the specified percentages). Respondent  
27 Hazen also reported filing tax returns for Mrs. Harris as well as for the trust.

28 D. However, repeated efforts by Howell and McCloskey to obtain from Respondent

1 Hazen an accounting and a final distribution were unsuccessful, and were met with delays and  
2 broken promises from Respondent, finally leading to his removal as trustee by court order in  
3 response to a Petition filed by Co-trustee Howell and Beneficiary McCloskey on April 27, 2001,  
4 in Alameda County Superior Court (Case #H 27657 3). The court further ordered that an  
5 accounting be filed July 31, 2001, with a hearing on the accounting scheduled for August 17,  
6 2001. No accounting was filed with the Court, and no appearance was made by Respondent  
7 Hazen at the August 17 hearing, following which a Contempt of Court Declaration was filed with  
8 the Court, which again ordered Respondent Hazen to deliver all of the physical assets and  
9 records of the trust on August 31, 2001 (on which date the Court also scheduled a hearing).  
10 Respondent Hazen appeared on August 31 and produced two checks - one in the amount of  
11 \$5623.66 (No.10-918296) and one in the amount of \$210.75 (No. 10-918297). Respondent also  
12 produced an accounting which showed, as of July 31, 2001, assets in a savings account of  
13 \$208,992.06. At the hearing, Respondent Hazen pledged to send the savings account balance by  
14 wire transfer and delivered four boxes of documents. Subsequent examination of the four boxes  
15 of documents revealed that no bank accounts, bank statements, signature cards, passbooks, etc.  
16 were provided. Subsequent examination also revealed deficiencies in the accounting.

17 E. On September 6, 2001, counsel for the successor trustee learned that a deposit of  
18 \$20,000 (not \$208,992.06) had been made into (his) trust account. Based upon the lack of  
19 compliance with the Court's order (failure to transfer assets and failure to produce records), the  
20 Court issued subsequent orders and set a hearing for November 9, 2001. Subsequently, a  
21 Stipulation for Judgment Payable in Installments, and a Separate Judgment on Stipulation for  
22 Entry of Judgment, were filed with the Court on January 30, 2002, providing for the payment by  
23 Respondent of \$113,200.00 in eighteen payments of \$6,670.00 commencing on February 1,  
24 2002.

25 15. An examination of bank records and canceled checks reveals disbursements from  
26 the trust account maintained by Respondent for the benefit of the trust (Fremont Bank Acct. 56-  
27 90369-3: Robert Hazen, Trustee for Dale C & Enid Harris) to Respondent's accounts, that is, to  
28 business and personal accounts of Robert Hazen, and/or to accounts of his family members or

1 other individuals, without apparent legal authority therefore, and in apparent violation of the  
2 terms of the trust. These disbursements exceed \$150,000.00, and are not authorized by the trust.  
3 A comparison of the records to the trust tax returns for the years 1999 and 2000 reveals that the  
4 tax returns did not reflect these disbursements, that is, the returns do not contain, for example,  
5 any deduction expense amounts for trustee fees, tax return, accounting or other professional  
6 services, despite numerous checks written to Respondent.

7 The disbursements are not reported in the trust's financial statements. The disbursements  
8 do not appear in the trust accounting. The difference between the financial statements prepared  
9 and issued by Respondent as of December 31, 1999, and the trust's bank balance as of that date  
10 is \$176,548.49. The difference between the financial statements prepared and issued by  
11 Respondent as of December 31, 2000, and the trust's bank balance as of that date is \$198,258.11.

12 16. The amount of interest income, as (1) reflected in the bank account records, (2)  
13 reported on the tax returns prepared by Respondent for the tax years 1999 and 2000, and (3)  
14 reflected in the financial statements prepared by Respondent, is completely inconsistent. The  
15 actual interest income in the depleted bank account was much lower than reflected in either the  
16 financial statements or the tax returns prepared, signed, and filed by Respondent. Had the  
17 interest income been reported correctly on the trust tax returns, there would have been no tax due  
18 with the returns. Instead, the trust (over)paid \$65 and \$1230, respectively, in taxes in 1999 and  
19 2000. The only professional fee on either year's tax return was a \$325 tax preparation fee in  
20 1999.

21 17. Incorporating by reference the matters set forth in paragraphs 13 through 16  
22 respondent's license is subject to discipline on each of the following bases:

23 A. The diversion of Harris trust assets to the business and personal accounts of  
24 Respondent constitutes embezzlement, and/or, misappropriation of funds or property in violation  
25 of Code section 5100(j).

26 B. The diversion of Harris trust assets to the business and personal accounts of  
27 Respondent constitutes dishonesty and/or fraud in the practice of public accountancy in violation  
28 of Code section 5100(c).

1 C. The diversion of the Harris trust assets to the business and personal accounts of  
2 Respondent constitutes self-dealing and lack of integrity in violation of Board Rule 65 in  
3 conjunction with Code section 5100(f) and the AICPA Code of Professional Conduct.

4 D. The diversion of the Harris trust assets to the business and personal accounts of  
5 Respondent constitutes gross negligence in the practice of public accountancy under Code  
6 section 5100(c) in violation of applicable professional standards and or legal requirements.  
7 While acting as trustee, Respondent placed his own financial interests above those of the trust  
8 and the beneficiary, and ignored professional requirements of integrity and lack of self-dealing.

9 E. Each unauthorized diversion of the Harris trust assets to the business and personal  
10 accounts of Respondent, as well as every instance of Respondent's failure to perform his duties  
11 as required by the California Probate Code, constitutes a separate breach of Respondent's  
12 fiduciary responsibility in violation of Code section 5100(h).

13 F. The preparation of false trust financial statements or accountings, which overstate  
14 interest income and exclude the material unauthorized disbursements, constitutes the knowing  
15 preparation, publication or dissemination of false, fraudulent, or materially misleading financial  
16 statements, reports, or information, in violation of Code section 5100 (i).

17 G. The preparation and dissemination of false, fraudulent and misleading trust tax  
18 returns, which overstate interest income and conceal the material unauthorized disbursements,  
19 constitutes the knowing preparation, publication or dissemination of false, fraudulent, or  
20 materially misleading financial statements, reports, or information, in violation of Code section  
21 5100 (i).

22 H. The preparation and filing of trust tax returns which overstated interest income,  
23 with a corresponding overpayment of tax, while concealing material unauthorized disbursements  
24 from the trust which negatively impacted the corresponding interest income, constitutes gross  
25 negligence in violation of Code section 5100(c) in that the conduct is an extreme departure from  
26 professional standards governing Respondent's duties.

27 I. The failure of Respondent to timely provide, upon request, client records, to wit,  
28 accountings, other trust records and documentation, including tax records, documentation and



1 returns, constitutes gross negligence in violation of Code section 5100(c) in that the conduct is  
2 an extreme departure from professional standards governing Respondent's duties as a tax  
3 preparer.

4 J. The repeated failure of Respondent to comply with his duty to respond to  
5 inquiries from the trust beneficiaries or their representatives, and from his co-trustee and his  
6 representatives, including his failure to timely provide, upon request, client records, to wit,  
7 accountings, other trust records and documentation, including tax records, documentation and  
8 returns, constitutes several instances of the breach of fiduciary responsibility under Code section  
9 5100(h).

10 K. The failure to provide, upon request, client records, to wit, accountings, other trust  
11 records and documentation, including tax records, documentation and returns, constitutes  
12 multiple violations of Code section 5037(b)(2) and Board Rule 68 (Cal. Code Regs., tit.16, §68)  
13 in conjunction with Code section 5100 (f) .

## 14 **SECOND CAUSES FOR DISCIPLINE**

### 15 **Ivan C. Smith Trust(s), including** 16 **Charitable Remainder Unitrusts #1 and #2** 17 **and the Smith Living Trust**

18 18. The CPA certificate of Respondent Robert Hazen is subject to discipline for multiple  
19 violations of the Business and Professions Code and other laws, arising out of or related to his  
20 past and current position as trustee for the Ivan C. Smith Trusts.

21 19. The circumstances regarding the Smith Trusts and Respondent Robert Hazen's  
22 involvement with it are as follows:

23 A. The Ivan C. Smith Charitable Remainder Unitrusts #1 and # 2 (hereinafter "Smith  
24 Unitrusts") were created on or about March 12, 1993, by settlor and co-trustee, Ivan C. Smith,  
25 with the professional assistance of Respondent. Respondent was named trustee of the trusts. Ivan  
26 C. Smith, the settlor, and a former client of Respondent, is now deceased. Respondent was  
27 removed as trustee of these trusts in or about April, 2000. The successor trustee is Deseret Trust  
28 Company of California.

B. Ivan Smith also funded the Ivan C. Smith Living Trust ("Smith Living Trust").

1 Hazen was made, and remains, the trustee for this trust.

2 C. The Smith Unitrusts provided for beneficiary payments of seven percent of the net  
3 fair market value of the trust assets valued as of the first day of each taxable year to the  
4 beneficiaries thereof, who were Smith's daughter and step-daughter, Kathleen Carruth (Unitrust  
5 # 1) and Jackie Wooten (Unitrust #2), respectively. An accounting as of December 31, 1993,  
6 indicated that the combined trust assets totaled \$1,004,248.28, resulting in each Unitrust being  
7 "allocated" approximately \$500,000.<sup>4</sup>

8 D. Respondent's removal as trustee of the Smith Unitrusts on or about April 27,  
9 2000, followed several actions or omissions by Respondent in carrying out his duties as trustee,  
10 including his duty to cooperate with the successor trustee in making an orderly and prompt  
11 transfer of the trust's assets:

12 (1) Timely provide a 1999 form K-1 relating to trust proceeds for Unitrust #2;

13 (2) Failing to make timely trust beneficiary distributions to Ms. Wooten  
14 beginning in 1996. After Respondent's removal as trustee, check(s) drawn on the trust account  
15 in July 2000 were not honored by the bank due to insufficient funds, and Respondent made no  
16 further distributions to Ms. Wooten;

17 (3) Failing to make trust beneficiary distributions to Ms. Carruth after  
18 September 9, 1999.

19 (4) Failing to provide an accounting of the trust assets since 1996.

20 (4.1) Failing to provide other information, in spite of repeated requests to do  
21 so;

22 (5) Failing to relinquish trust assets or records to the successor trustee, as  
23 required by law, after being notified of his removal as trustee.

24 (6) Failing to produce to the beneficiaries or successor trustee a complete  
25 copy of the respective (1993) Unitrust documents reflecting assets of Unitrusts notably, failure to  
26

---

27 4. Respondent Hazen represented to Ms. Wooten (beneficiary of trust #2) that she would  
28 receive monthly distribution checks of \$2,900.

1 produce, for either Unitrust, "Schedule A - Trust Assets," or other documentation reflecting  
2 corpus, or assets, of trust.

3 E. The successor trustee for the Smith Unitrusts #1 and #2, Deseret Trust Co. filed a  
4 Complaint against Robert D. Hazen, Tyra Hazen, and Net Profit, Inc., in Alameda County  
5 Superior Court (Case No. 02-042897) on March 4, 2002, alleging, inter alia, Fraud, alleging  
6 breach of the trust agreement by respondent's "converting funds to his own use in violation of the  
7 trust agreements' prohibition against self dealing and in failing to manage trust assets and income  
8 in the manner required by the agreements." Further allegations included Intentional or Negligent  
9 Misrepresentation and Concealment. The allegations included a claim that Respondent  
10 defrauded the trusts of at least \$600,000. A Judgment Default was entered in the case in the  
11 amount of \$442,664.29 on September 9, 2002.

12 20. Among the entities with which Respondent has, or has had, business or fiduciary  
13 ties are several trusts set up by Respondent for the benefit of his clients, including the WAGH  
14 Foundation, Sampsell Foundation, Murphy and Wagoner Insurance Trust, Hopper Living Trust,  
15 and Rodney Sweet Trust; R & R Administration, Inc., an unincorporated entity; Net Profit, Inc.,  
16 a suspended corporation; Net Profit Tax Centers, Inc.; and Philanthropic Charities, a suspended  
17 corporation.

18 21. An examination of bank records and canceled checks reveals that Respondent was  
19 the signatory on at least two separate checking accounts for the Ivan C. Smith (combined) trusts.<sup>5</sup>  
20 Separate accounts were not maintained for the Smith Living Trust as distinguished from one or  
21 both of the Smith Unitrusts; thus the funds from the Living Trust were commingled with funds  
22 from both Unitrusts. Many disbursements from the trust accounts maintained by Respondent  
23 were made to Respondent, that is, to business and personal accounts of Respondent Robert  
24 Hazen, and/or to accounts of his family members, to the bank (endorsed by Hazen and/or  
25

---

26 5. One "account," "Ivan C. Smith, Robert D. Hazen as Trustee," was opened at Centennial  
27 Bank (numbered 007002-23304), continued through subsequent changes in bank identity to  
28 Alameda Bank, U.S. Bank, and USBancorp until it was closed. The other account, numbered  
56800738, was at Fremont Bank, beginning 3/9/98, "Ivan C. Smith Living Trust."

1 apparently paid to Hazen, to other purported trusts<sup>6,7</sup>, all without apparent legal authority  
2 therefore, and in apparent violation of the terms of the trust. Many of these questionable  
3 disbursements were not recorded in the Unitrusts' general ledger, and exceed \$130,000.

4 22. A comparison of the general ledger to the trust tax returns for both Unitrusts for  
5 the years 1997, 1998 and 1999 revealed anomalies, examples of which are:

6 A. The tax returns and the beneficiary K-1's year did not contain any deduction  
7 expense amounts for trustee fees, tax return, accounting or other professional services, despite  
8 numerous checks written to Respondent which indicate they are payment of trustee fees.  
9 However, while at least thirteen checks, payable to Respondent, drawn on the trust account(s),  
10 carry a memo notation indicating that they were trustee fees, totaling, in 1996 and 1997, over  
11 \$20,000, neither those payments, nor the payments reflected in paragraph 21, were reflected in  
12 the tax returns prepared by Respondent. Thus, Respondent concealed, or did not reveal, any  
13 payment to himself for services rendered.

14 B. There are significant discrepancies between the balances per general ledger and  
15 the amounts reported on the Unitrust tax returns prepared by Respondent.

16 23. Incorporating by reference the matters set forth in paragraphs 18 through 22,  
17 respondent's license is subject to discipline on each of the following bases:

18 A. The diversion of the Smith Unitrust assets to the business and personal accounts  
19 of Respondent and/or of Respondent's relatives or business associates, constitutes  
20 embezzlement, and/or, misappropriation of funds or property, in violation of Code section  
21 5100(j).

22 B. The diversion of the Smith Unitrust assets to the business and personal accounts  
23 of Respondent constitutes dishonesty and/or fraud in the practice of public accountancy in  
24

---

25 6. Respondent is trustee of many trusts, the names of all of which are known to  
26 Respondent and not to Complainant. Among the trusts are Torchmark Cattle Co.; Cherokee  
27 Holding Co.; and Prime Properties.

28 7. Among the entities with which Respondent has business ties is Philanthropic Charities.  
Respondent is a trustee of Philanthropic Charities, Inc., a suspended corporation.

1 violation of Code section 5100(c).

2 C. The diversion of the Smith Unitrust assets to the business and personal accounts  
3 of Respondent constitutes self-dealing and lack of integrity in violation of Board Rule 65 in  
4 conjunction with Code section 5100(f) and the AICPA Code of Professional Conduct.

5 D. Respondent's conduct as trustee, including, but not limited to the diversion of the  
6 Smith Unitrust assets to the business and personal accounts of Respondent, constitutes gross  
7 negligence in the practice of public accountancy under Code section 5100(c) in violation of  
8 applicable professional standards requiring integrity and lack of self-dealing and conformance to  
9 the California Probate Code. While acting as trustee, Respondent placed his financial interests  
10 above those of the beneficiaries and/or acted against the wishes set forth by the trustor and/or  
11 violated the standard of practice set forth in the Probate Code.

12 E. Each unauthorized diversion of the Smith trust assets to the business and personal  
13 accounts of Respondent, as well as every instance of Respondent's failure to perform his duties  
14 as required by the California Probate Code (including his duties of accounting), constituting  
15 repeated instances of the breach of Respondent's fiduciary responsibility as trustee in violation of  
16 Code section 5100(h).

17 F. The preparation of the tax returns (Forms K-1 and Forms 1041-A) without  
18 properly accounting for trustee fees constitutes the knowing preparation and filing dissemination  
19 of false, fraudulent, or materially misleading financial statements, reports, or information in  
20 violation of Code section 5100 (i).

21 G. The preparation and dissemination of the Unitrusts' general ledger, which omitted  
22 significant disbursements to himself, constitutes the knowing preparation and filing  
23 dissemination of false, fraudulent, or materially misleading financial statements, reports, or  
24 information in violation of Code section 5100 (i).

25 H. The repeated failure of Respondent to comply with his duty to respond to  
26 inquiries from the trust beneficiary or beneficiaries and their representatives, and to inquiries  
27 from the successor trustee, including Respondent's failure to provide, upon request, client  
28 records, to wit, accountings, other trust records and documentation, including tax records,

1 documentation and returns constitutes unprofessional conduct under Code section 5100 and/or  
2 gross negligence under Code section 5100(c). His conduct violated the California Probate Code  
3 and his duties as a tax preparer.

4 I. The failure to provide, upon request, client records, to wit, accountings, other trust  
5 records and documentation, including tax records, documentation and returns, constitutes  
6 multiple violations of Code section 5037(b)(2) and Board Rule 68 (Cal. Code Regs., tit.16, §68)  
7 in conjunction with Code section 5100 (f) .

8 24. Incorporating by reference the matters set forth in paragraphs 18 through 22, the  
9 commingling of funds, in each Smith trust bank account on which Respondent is the signatory,  
10 and Respondent's failure to keep separate accounts or to produce accountings as required  
11 constitute causes for discipline under Code Section 5100(c)(gross negligence), Code Section  
12 5100(h)(fiscal dishonesty), and Code Section 5100(h)(breach of fiduciary responsibility). The  
13 commingling has resulted in keeping more complete information about the Unitrusts' assets from  
14 the beneficiaries and successor trustee, and has contributed to Respondent's ability to make  
15 questionable disbursements from the trust funds' bank account.

16 25. Incorporating by reference the matters set forth in paragraphs 18 through 22, and in  
17 connection with his duties as trustee for the Ivan C. Smith Living Trust, Respondent has  
18 breached his duty as trustee in that he has provided, to a debtor (whose debt was secured by a  
19 deed of trust on a home), an inaccurate accounting of payments made to him as trustee, and an  
20 inaccurate accounting of payments owing him as trustee; and he has failed to diligently pursue  
21 the recovery of a trust asset. He has also failed to respond to the debtor's efforts to make  
22 payments, causing her increased payments, legal fees and anxiety. The debtor, M.T., provided to  
23 Respondent a Cashier's Check in the amount of \$13,117.69, dated September 20, 2002, made out  
24 to Ivan C. Smith Living Trust, and obtained a Deed of Full Reconveyance for her encumbered  
25 property, said reconveyance signed on September 27, 2002, by Robert D. Hazen, as Successor  
26 Trustee of the Ivan C. Smith Living trust (successor trustee to Recon Services Corporation).

27 26. Incorporating by reference the allegations in paragraphs 18 through 22 and 25,  
28 Respondent's license is subject to discipline in that his conduct constitutes unprofessional

1 conduct in violation of one or more of the following subparagraphs of Section 5100: Section  
2 5100(c) gross negligence in the practice of public accountancy; Section 5100(h) breach of  
3 fiduciary duty; Section 5100(h) fiscal dishonesty; and/or Section 5100(i) material misstatement  
4 in financial record.

### 5 ADDITIONAL CAUSES FOR DISCIPLINE

#### 6 Unauthorized Practice

7 27. Respondent holds his license in his individual capacity. In November, 2000,  
8 Respondent applied for, and received, authorization from the Board to do business as a sole  
9 proprietor CPA, doing business as Net Profit Tax Centers. However, Respondent operates as a  
10 principal in a business, known variously as Net Profit, Inc.; Net Profit Tax Centers, Inc. and Net  
11 Profit Tax Centers, which business has at least three offices, employs several persons, and holds  
12 out to the public in a manner which would require Board licensure as a CPA corporation.

13 28. Net Profit, Inc. was incorporated (Corporate Number C1829001) on May 24,  
14 1993, with Myra Bell at 1558 B St #201, Hayward, CA 94541 the initial agent for service of  
15 process. The date of incorporation was May 24, 1993. A Statement by Domestic Stock  
16 Corporation filed in October 1998 identifies Tyra Hazen as the CEO of the Corporation formed  
17 to do business as "Management Training/Marketing" with Tyra Hazen serving as the registered  
18 agent for service of process at 170 Westwiche, Danville, CA 94506, and the corporation's  
19 principal executive office remaining at 1558 B St #201, Hayward, CA 94541. Robert H. Hazen,  
20 son of Respondent, is identified the Secretary and Chief Financial Officer of said corporation.  
21 The corporation was suspended on August 1, 2001. Net Profit, Inc. is not licensed as an  
22 accountancy corporation. Respondent is the principal or alter ego of Net Profit, Inc.

23 29. Net Profit Tax Center, Inc. was incorporated on August 14, 2002. The  
24 corporation's initial agent for service of process is Robert H. Hazen, son of Respondent. Net  
25 Profit Tax Center, Inc. is not licensed as an accountancy corporation.

26 30. Incorporating by reference the matters alleged in paragraphs 1 through 29,  
27 Respondent's conduct constitutes the unauthorized practice of public accountancy in violation of  
28 Code sections 5060, 5061, and 5070 in that offering services as a firm of CPA's is inconsistent

1 with the requirements that such firms be licensed.

2 31. Incorporating by reference the matters alleged in paragraphs 1 through 29,  
3 Respondent's conduct in operating as a sole practitioner without a fictitious business name  
4 constitutes the unauthorized practice of public accountancy in violation of Code sections in that  
5 it constitutes the practice of public accountancy under a name which is false or misleading,  
6 because, in truth and in fact, Respondent often practiced using the name of an entity such as Net  
7 Profit Tax Centers without authority therefore. Likewise, Respondent's practice as a sole  
8 practitioner, having obtained an approved fictitious business name, constitutes the practice of  
9 public accountancy under a name which is false or misleading because his representation that he  
10 practiced as a sole practitioner is false.

11 **Failure to Respond**

12 32. The repeated failure of Respondent to respond promptly, and/or completely, to  
13 written Board inquiries during the course of its investigation constitutes unprofessional conduct  
14 in violation of Board Rule 52 in conjunction with Code section 5100 (f). Board Rule 52 (Cal.  
15 Code Regs., tit.16, § 52) requires that a licensee:

16 "...respond to any inquiry by the board or its appointed representatives. The response shall  
17 include making available all files, working papers and other documents requested. Failure  
18 to respond to the inquiry within 30 days constitutes a violation of Section 5100(f) of the  
19 Accountancy Act. Any inquiry by the board requiring a response pursuant to this section  
20 shall be in writing. The 30-day response period begins when the inquiry is mailed to the  
21 licensee, or if not mailed, when personally delivered."

22 33. Respondent, in response to a subpoena, represented to the Board's investigator  
23 that the Smith trust did not use separate bank accounts and therefore bank information was not  
24 provided, whereas, in truth and in fact, there were records at Fremont Bank and Centennial/U.S.  
25 Bank which were subpoenaed directly from the bank after the consumer complainant identified  
26 two separate Ivan C. Smith Trust bank accounts. (In both cases, records had to be subpoenaed  
27 from the respective banks rather than provided by Respondent, who had the duty, as trustee, to  
28 maintain the records.) Respondent's misconduct, as described, constitutes unprofessional  
conduct in violation of Code section 5100.



1 OTHER MATTERS

2 34. Pursuant to Code Section 5107, it is requested that the administrative law judge, as  
3 part of the proposed decision in this proceeding, direct Respondent to pay to the Board all  
4 reasonable costs of investigation and prosecution in this case which may be assessed for certain of  
5 the violations alleged herein under that Code Section, including, but not limited to, attorneys' fees.

6 35. It is charged, in aggravation of penalty, that Respondent has engaged in conduct  
7 over a period of years which has blatantly elevated his financial self-interest over that of those  
8 whom he is responsible to serve as a licensee of the Board. Further, at all times material to the  
9 Board's investigation, Respondent has failed to cooperate with the respective successor trustees  
10 and with the Board's investigation.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
13 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

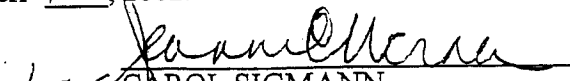
14 1. Revoking, suspending, or otherwise imposing discipline upon Certified Public  
15 Accountant Certificate Number 16767, issued to Robert D. Hazen;

16 2. Revoking, suspending, or otherwise imposing discipline upon Fictitious Name  
17 Permit No. 1074, issued to Robert D. Hazen permitting him to practice as a sole proprietor under  
18 the name Net Profit Tax Center;

19 3. Ordering Robert D. Hazen to pay the California Board of Accountancy the  
20 reasonable costs of the investigation and enforcement of this case which may be assessed to  
21 Respondent pursuant to Business and Professions Code section 5107; and

22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: December 13, 2002.

24   
25 CAROL SIGMANN  
26 Executive Officer  
27 California Board of Accountancy  
28 Department of Consumer Affairs  
State of California  
Complainant